

HB 1894 -- DESIGN BUILD CONTRACTS

SPONSOR: Korman

CONSTRUCTION MANAGER PROJECTS

The bill defines "construction manager," as the legal entity that proposes to enter into a construction management-at-risk contract and "construction manager-at-risk," as a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation to a political subdivision regarding construction during and after the design of the project.

Any political subdivision may use the construction manager-at-risk method for a project. Before or concurrently with selecting a construction manager-at-risk, the political subdivision shall select or designate an engineer or architect who shall prepare the construction documents for the project and who shall comply with all state laws, as applicable. If the engineer or architect is not a full-time employee of the political subdivision, the political subdivision shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Sections 8.285 to 8.291, RSMo.

The political subdivision shall select the construction manager-at-risk in a two-step process as specified in the bill. Requirements for legal liability and dividing projects between managers and subcontractors are further specified. The bill does not apply to any metropolitan sewer district established under Article VI, Section 30(a) of the Constitution of Missouri, or charter city or charter county governed by home rule under Article VI, Section 18 or 19 of the Constitution of Missouri. Civil works projects such as roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by professional engineers shall be limited to those projects in excess of two million dollars and non-civil works projects such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects shall be limited to those projects in excess of seven million dollars. These provisions of the bill expire September 1, 2025.

DESIGN BUILD PROJECTS

The bill specifies definitions for use in regulating design build projects. Among the terms specified are "design-build," which

means a project delivery method subject to qualifications-based selection for which the design and construction services are furnished under one contract, "design-build contract," a contract that is subject to a qualifications-based selection process described in Sections 8.285 to 8.291 between a political subdivision and a design-builder to furnish the architectural, engineering, and related design services and the labor, materials, supplies, equipment, and other construction services required for a design-build project.

In using a design-build contract, the political subdivision shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project. A design criteria consultant shall be employed or retained by the political subdivision to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review and approve progress and final pay applications of the design-builder, review shop drawings and submissions, provide input in disputes, help interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections, and provide any other professional service assisting with the project administration. The design criteria consultant may also evaluate construction as to the adherence of the design criteria. The consultant shall be selected and its contract negotiated in compliance with Sections 8.285 to 8.291 unless the consultant is a direct employee of the political subdivision.

Criteria for notice and content regarding requests for proposals are specified in the bill. The political subdivision shall solicit proposals in a three-stage process. Phase I shall be the solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a technical proposal, including conceptual design for the project. Phase III shall be the proposal of the construction cost. The bill describes these phases in detail.

As an inducement to qualified design-builders, the political subdivision shall pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Such stipend shall be no less than one-half of one percent of the total project budget. Upon payment of the stipend to any unsuccessful design-builder, the political subdivision shall acquire a nonexclusive right to use the design submitted by the design-builder, and the design-builder shall have no further liability for the use of the design by the political subdivision in any manner. If the design-builder desires to retain all rights and interest in the design proposed, the design-builder shall forfeit

the stipend. The payment bond requirements of Section 107.170 shall apply to the design-build project. Any person or firm performing architectural, engineering, landscape architecture, or land-surveying services for the design-builder on the design-build project shall be duly licensed or authorized in this state to provide such services as required by Chapter 327. Under Section 327.465, any design-builder that enters into a design-build contract with a political subdivision is exempt from the requirement that such person or entity hold a license or that such corporation hold a certificate of authority if the architectural, engineering, or land-surveying services to be performed under the design-build contract are performed through subcontracts or joint ventures with properly licensed or authorized persons or entities and not performed by the design-builder or its own employees.

The bill does not apply to any metropolitan sewer district established under Article VI, Section 30(a) of the Constitution of Missouri, or charter city or charter county governed by home rule under Article VI, Section 18 or 19 of the Constitution of Missouri. The authority to use design-build and design-build contracts expires September 1, 2025.

SPECIALTY CONSTRUCTION PROJECTS

The bill allows any political subdivision to enter into a special construction design contract for engineering, design, and construction of a wastewater or water treatment project. A political subdivision planning a specialty construction design project shall retain an engineer duly licensed in this state to assist in preparing any necessary bid documents and specifications and evaluations of submissions and bids. "Specialty construction design" means any contract that involves the provision of engineering and construction services either directly by a party to the contract or through subcontractors retained by a party to the contract.

In disbursing community development block grants under 42 U.S.C. Sections 5301 to 5321, the Department of Economic Development shall not reject wastewater or water treatment projects solely for utilizing specialty construction design contracts. The Department of Natural Resources shall not preclude specialty construction design contracts from consideration for funding provided by the water and wastewater loan fund under Section 644.122.